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REVIEW OF THE EFFICIENCY OF THE ADMINISTRATIVE AND FINANCIAL FUNCTIONING OF THE UNITED NATIONS

PROGRAMME BUDGET FOR THE BIENNIUM 1992-1993

Revised estimates as requested by the General Assembly in resolution 47/212

Sixteenth report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General (A/C.5/47/88), which presents the revisions to the programme budget for the biennium 1992-1993 proposed to the General Assembly in connection with the restructuring of the Secretariat initiated by the Secretary-General.

2. The Secretary-General states in the report that the translation into budgetary and programmatic terms of the restructuring involves the creation of new departments and the redeployment of posts and redistribution of resources among various sections of the programme budget for the remaining part of the biennium 1992-1993. Accordingly, he requests, among other things, the approval of the General Assembly for transfers of resources among sections of the programme budget as detailed in his report and for a revised appropriation of $2,467,775,800. This amount is $263,400 less than the amount approved by the General Assembly in its resolution 47/220 A of 23 December 1992.

I. BACKGROUND AND GENERAL OBSERVATIONS

3. In his note of 21 February 1992 (A/46/882), the Secretary-General announced changes he had made with the intent of consolidating and streamlining the Organization's activities into well-defined functional categories aimed at ensuring effective implementation of the objectives of the Charter and of the mandates entrusted by the policy-making organs.

4. In its resolution 46/232 of 2 March 1992, the General Assembly, inter alia, took note of those actions and approved the launching by the Secretary-General of a further process of restructuring and streamlining of the Secretariat. The Assembly also set forth the aims of the restructuring and requested the Secretary-General to report on the programmatic impact as well as the financial implications of organizational changes involved in his initiatives. Subsequently, in its resolution 47/212 of 23 December 1992, the Assembly, inter alia, stressed that the restructuring of the Secretariat should be in conformity with the objectives and guidelines/principles set out in resolution 46/232 of 2 March 1992 and in close consultation with Member States and relevant intergovernmental bodies. The Assembly also requested the Secretary-General to submit in early 1993 revised estimates on the programme budget for the biennium 1992-1993 with all the revisions associated with the restructuring process as well as the programmatic aspects and justifications of the restructuring requested in resolution 46/232.

5. The conduct of the Committee's work was made more difficult by the late submission of the report of the Secretary-General, which was not available to the Committee until some two weeks after it had been expected.

6. A major difficulty the Advisory Committee had in its consideration of the report was that it lacks a context, a long-term concept or framework for the whole process of restructuring and where the restructuring of the Secretariat fits into that process. The Committee believes that there is a need for a clear statement of an overall restructuring plan and a time-frame for its implementation. The report of the Secretary-General should have demonstrated how the proposed changes would, in fact, better enable the Secretariat to respond to the relevant intergovernmental decisions, particularly General Assembly resolution 41/213 of 19 December 1986 and to the programme mandates entrusted to it by the Member States, and how the restructuring would achieve the management aim of a "more responsive, cost-effective, streamlined Secretariat" (A/C.5/47/88, para. 7).

7. As stated in paragraph 3 of his report, the Secretary-General's conclusions benefited from the advice of high-level independent experts. That being the case, the Advisory Committee is of the view that in order to understand fully the genesis of the proposals, the report of the high-level independent experts should have been provided to it. The Committee cautions against an over-reliance on external consultant expertise and recommends that the considerable in-house expertise be utilized and taken into account.

8. The Advisory Committee's comments and observations in the paragraphs below are intended to be taken into account not only at the present juncture but also when the Secretary-General's proposals for the programme budget for the biennium 1994-1995 are being prepared and reviewed.

II. FORMAT AND PRESENTATION

9. The revised estimates are not submitted in a complete budget format. Although it is stated that programmatic justification is provided for each element of the restructuring and that the specific mandates and activities embodied in the current medium-term plan and the programme budget will be

implemented by the restructured departments and units, those mandates are not consistently identified. This was particularly so with regard to a number of the activities under the proposed three new departments, for example, under the Department of Economic and Social Information and Policy Analysis, the analysis, at the micro-economic level, of the use of market mechanisms and the role of the firm, and the linkage of the Department's activities with early warning capabilities being developed in the political and humanitarian sectors of the Organization. The Committee notes from paragraph 40 (a) of the report of the Secretary-General that the Department of Development Support and Management Services will "give particular attention to the requirements of the least developed countries and those of economies in transition". The Committee trusts that the implementation of those activities will be fully consistent with legislative mandates. In this regard, in response to inquiries regarding paragraphs 21 (c) and 40 (a) of the report, the representatives of the Secretary-General stated that it was not intended to change the priorities agreed to by Member States.

10. The report also fails to show the distribution of subprogrammes and resource allocation among the departments or how the mandates and activities provided for in the medium-term plan will, in fact, be implemented. This, in the Committee's view, greatly reduces the ability of all concerned to evaluate the "global" allocation of resources among departments and adequately to assess the programmatic impact of such changes. The Committee reaffirms the importance of continuing to apply the present regulations and rules governing programme planning and the programme aspects of the budget, and in particular rule 103.4 of the Financial Rules.

11. In fact, because the internal structures of the new departments have yet to be finalized, it is not possible to evaluate how the restructuring will result in "organizational units with more focused and precise terms of reference and clear lines of responsibility and accountability" (A/C.5/47/88, para. 7). Indeed, the report states that the "identification of duplications and redundancies that might exist in the various units of the Secretariat implementing mandated activities will take place in the context of the preparation of the proposed programme budget for the biennium 1994-1995" (ibid., introduction). In principle consolidations of this kind should lead to greater staff and management efficiency.

12. The Secretary-General also states that the resources appropriated under objects of expenditure other than salaries and common staff costs have been redistributed on a functional or proportionate basis, taking into account, in particular, the minimum requirements of the new departments in relation to their overall work programme. In other words, no detailed allocation of resources by subprogramme has been done. That being the case, the provisions "will be managed in a flexible manner to accommodate priority requirements of the three departments ... for the remainder of the year" (para. 83). In this connection, the Committee was informed that the corresponding budget sections for the departments will be separate sections in the programme budget for the biennium 1994-1995.

13. In paragraph 88, the Secretary-General recalls that "the resources for the activities related to the new mandates stemming from the United Nations Conference on Environment and Development were appropriated by the General

Assembly at its forty-seventh session, in December 1992, for the period 1 January-31 March 1993 only, on the understanding that the level of these resources would be reviewed in the context of the present revised estimates". For the reasons provided in paragraphs 89 and 90, the Secretary-General states in paragraph 90 that in view of the overall projected savings resulting from the restructuring, no additional appropriation is needed.

14. In its resolution 47/212, the General Assembly invited the Committee for Programme and Coordination and other concerned intergovernmental bodies to submit their comments and recommendations concerning the programmatic aspects and consequences of the restructuring of the Secretariat in the areas of their competence to the Assembly at its forty-eighth session, and took note of the revised estimates arising from the initial phase of the restructuring, on the understanding that, pending the work of the relevant intergovernmental bodies, the Secretary-General would submit in early 1993 revised estimates of the programme budget for the biennium 1992-1993. Consequently, the revised estimates cannot reflect the comments and recommendations of the Committee for Programme and Coordination and other relevant intergovernmental bodies. That being the case, the Committee recommends that such reviews be undertaken before the General Assembly considers and approves the proposed programme budget for the biennium 1994-1995. The Advisory Committee has regularly stressed the importance of the involvement of specialized bodies in the planning and programming process. 1/

15. As stated above, the revised estimates appear, at face value, to be cost neutral. However, the Advisory Committee notes that the various categories of costs shown in table II relate to differing periods within the biennium; there is no indication of the biennialized costs of the resulting structure that could be compared to the structure reflected in the initial appropriation for 1992-1993. The lack of such information in the report, as well as a clear presentation of the new structure by programme budget section, hinders an evaluation of the financial effects of the restructuring. These comments should not be misinterpreted to infer that the Committee believes that the only purpose behind the restructuring was to reduce the budget. Nevertheless, full disclosure of the financial impact is necessary for a proper analysis.

III. ORGANIZATION PROPOSALS

16. As detailed in his report, the Secretary-General is proposing changes in the organizational structure of the economic and social sectors, the political and humanitarian sectors, and the public information and common support service sectors. The Committee discussed these changes at length with the representatives of the Secretary-General, including his Special Adviser. The representative of the Secretary-General acknowledged that the fact that the proposals for restructuring were presented in the revised estimates made the understanding of the proposals very difficult. He elaborated on the functional objectives of the restructuring, which consist of:

(a) Overcoming shortcomings such as:

(i) The long-term tendency of various components of the Organization to develop work programmes in isolation from each other;

(ii) The tendency for the Organization, sometimes based on Member States' initiatives, to create new Secretariat entities whenever new agendas are adopted and to present contradictory policy recommendations to Member States on the same issues;

(b) Creating a more manageable set of units and components of the Secretariat.

17. The representative of the Secretary-General further explained that, thanks to the scale economies to be achieved, enough long-term savings would be expected to accommodate new activities deriving from the various forthcoming global United Nations conferences without requiring additional structure and resources in the bienniums to come, unless decisions to the contrary were taken by Member States. Although the Committee benefited from those discussions, it believes that, in a number of areas, further analysis and more compelling justification need to be outlined to Member States in the context of the Secretary-General's proposed programme budget for the biennium 1994-1995.

18. In making the above observations, the Committee emphasizes that it does not question the substantive policy considerations underlying the proposed creation of the three new departments 2/ that the Secretary-General announced in his note (A/47/753) and further elaborated in paragraph 20 of his report (A/C.5/47/88). However, there is need for more detailed explanation of the various components, structure and operation of those departments.

19. In particular, the Committee is of the view that more justification is needed in relation to the transfer of functions and posts between duty stations with regard to activities pertaining to social development and the advancement of women, the World Food Council (WFC), transnational corporations, science and technology for development and the peaceful uses of outer space.

20. In the Committee's view, despite the explanations contained in the report and elaborated on by representatives of the Secretary-General, the rationale behind the proposals relating to these transfers has not been adequately or fully explained and outstanding questions remain to be addressed, in particular with regard to the proposals to break up the social development nucleus at Vienna and to transfer programmes relating to transnational corporations, science and technology for development and peaceful uses of outer space.

21. With regard to Vienna, the Secretary-General acknowledges that issues relating to the United Nations Office at Vienna will be elaborated during the course of the current year. The absence of that information at the present time is regrettable; the Committee trusts that, as stated, relevant proposals (and justification) will be contained in the Secretary-General's proposed programme budget, taking into account the decisions of the relevant intergovernmental bodies.

22. Related to the above is the issue of decentralization, which, as stated by the Secretary-General, is an important and integral part of the current restructuring exercise. However, as discussed in paragraphs 60 and 61 of his report, a decision has not yet been made regarding which activities could be more effectively carried out at the regional level; information in this regard will only be reflected in the Secretary-General's proposed programme budget for

the biennium 1994-1995. This in turn makes it difficult to evaluate other proposals of the Secretary-General and therefore the decision on the transfer of functions and posts between duty stations should be further elaborated in the context of the decentralization process.

23. In view of what is stated in paragraphs 21 and 22 above, it is for the General Assembly, taking into account its previous decisions as well as justifications provided by the Secretary-General, to decide, with regard to the Secretary-General's various proposals described above, on the best way of proceeding with regard to the transfer of functions between duty stations.

24. The Secretary-General states in paragraph 63 of his report that "the consensus about the need for a unified United Nations presence and approach at the country level has continued to grow". In this connection, the Committee emphasizes the need for full consultation with Member States with respect to all issues related to the concept of the unified United Nations presence at the country level based upon the relevant resolutions of the General Assembly.

25. As mentioned, the Secretary-General's proposals involve the transfer of posts among various duty stations (Rome, New York, Geneva and Vienna). The Secretary-General estimates the full costs for the relocation of staff at approximately $2 million, as shown in table II (see also A/C.5/47/88, para. 79 (b)). The Committee notes, however, that there are other potential costs which have not been included in that figure. These include the cost of additional office space, if required, and the Advisory Committee trusts that the Secretary-General's proposals for 1994-1995 will provide clear information regarding differential costs of office space and any increases/decreases in costs attributable to the restructuring.

26. Additional costs may also arise with regard to the separation of staff who cannot locate a new assignment. Because of the Secretary-General's stated commitment in his statement on personnel items to the Fifth Committee that no staff member should lose his or her job as a result of the restructuring, such costs have not been included in the revised estimates. However, in the Advisory Committee's opinion, the possibility of separations agreed upon by both staff and administration does exist and the consequent cost will need to be identified.

27. The Advisory Committee notes that additional costs may also arise in respect of the servicing of intergovernmental bodies whose secretariats are proposed for transfer, pending any decision by the relevant bodies regarding their location. In addition, there may well be additional costs to Member States arising out of the relocation of these venues of intergovernmental bodies.

28. The Secretary-General's proposal to integrate the Office for Project Services of the United Nations Development Programme (UNDP) into the new Department of Development Support and Management Services, responds, as stated in the report, to repeated concerns about the compatibility of the functions and present location of the Office with the primary purpose of UNDP as a central coordinating and funding mechanism; it also addresses concerns about duplication in the delivery of technical cooperation services. These same concerns have been highlighted by the Advisory Committee in recent years in the context of its

examination of the UNDP administrative budget. The Committee therefore welcomes the overall objective of the proposal.

29. At the same time, it emphasizes that for such integration to succeed, a number of serious and potentially contentious issues must be dealt with by the joint task force that has been established to oversee the procedures to be put in place for the incorporation of the Office into the new Department. The Advisory Committee discussed some of these issues with representatives of the Secretary-General, including the provision of central services to the Office, which is currently done by UNDP and which would need to be done by the United Nations.

30. The Advisory Committee requests the Secretary-General to submit a detailed report to the Committee on the modalities that have been worked out before the proposed date of incorporation of 1 January 1994. The report should include information not only on how the conditions of operation enumerated in paragraph 102 of the report of the Secretary-General are to be met, but also on the projected magnitude of the portfolio of the Office for Project Services corresponding with its mandate and its internal organization to handle that portfolio.

31. In making this recommendation, the Committee notes that since the Office will absorb the functions similar to those currently carried out in the Department of Economic and Social Development, it will in effect become the largest operational agency of the United Nations. Care must be taken to ensure that the integration results in the elimination of any duplication of effort and, at the same time, that the consequent administrative structure does not become inflated or unwieldy because of its very size. In this connection, the Committee recalls that, as stated in the report of the Administrator (DP/1992/45), the Office for Project Services had renewed its effort to utilize the technical expertise of the agencies for the implementation of components of projects executed by it. In its related report (DP/1992/39), the Advisory Committee had welcomed that development and stated its hope that this would lead to improved burden- sharing, coordination and cooperation among entities of the system, based upon a clear definition of their respective competence. The movement of the Office does not, in the Advisory Committee's view, change that position. The intent remains to ensure the delivery of the best and most cost-effective technical cooperation to meet the requirements of the developing countries.

32. The Secretary-General's proposals in the economic and social sectors give rise to questions concerning the required coordination. The Secretary-General addresses this question, in part, in paragraphs 64 and 65 of his report, stating that arrangements in this regard are being reviewed and strengthened. The Advisory Committee stresses the importance of such coordination and trusts that more detailed information regarding the discharge of responsibilities formerly entrusted to the Director-General and the Secretary-General's intentions in this regard will be forthcoming.

IV. PROPOSALS RELATING TO THE DEPARTMENT OF ADMINISTRATION AND MANAGEMENT

33. The Secretary-General's proposals in the public information and common support service sector (A/C.5/47/88, paras. 69-72) involve, inter alia, the transfer of the Library from within the Office of Conference Services within the Department of Administration and Management to the Department of Public Information, as well as the transfer of certain functions of the Publishing Division to the same Department. The Advisory Committee understands that the proposals derive from an external consultant's report that was not made available to it; it also understands that they were not scrutinized and debated within the Secretariat to the same extent as those in the economic and social sectors and that various refinements are possible. The Committee requests the Secretary-General to indicate the results of any possible refinements in his proposed programme budget for the biennium 1994-1995, taking into account the relevant decisions of the General Assembly. Questions also arise as to the role of the Committee on Information vis-à-vis Library services and the need for the units concerned to coordinate substantive and technical support to the Committee on Conferences with respect to its consideration of publications policies.

34. Other elements of the restructuring of the Department of Administration and Management involve the internal transfer of the Field Operations Division from the Office of General Services to the Office of the Under-Secretary-General. The Advisory Committee points out that significant issues with respect to the management and administration of peace-keeping remain, including the interaction and coordination between the servicing, financial and political units involved. The Advisory Committee requests the Secretary-General to deal with these issues on an urgent basis.

V. VACANCY MANAGEMENT

35. As recalled in paragraph 74 of his report, the Secretary-General's previous revised estimates contained a description of a new treatment of vacancies, which had been initiated and which the Secretary-General intended to continue through the establishment of appropriate procedures as posts became vacant during the course of the biennium. Table IV of his report provides an updated breakdown of the temporary redeployment of vacant Professional posts.

36. Representatives of the Secretary-General stressed that the redeployment of these posts was temporary and if it were determined that the redeployment was needed for a longer period, the authority of the General Assembly and/or the Advisory Committee would be sought, in conformity with the relevant financial provisions. In this connection, the Committee recalls that in its report, 3/ it noted the Secretary-General's explanation that the authority for most transfers was currently done on an ex post facto basis; however, it would be his intention to apply the provisions of financial regulation 4.5 and rule 104.4 to ensure the meaningful involvement of the Assembly or the Advisory Committee regarding the transfer of resources/posts during the execution of a programme budget (para. 20). During the course of the Committee's examination of the Secretary-General's current report, representatives of the Secretary-General reiterated to the Committee their intention to report to it at six-monthly intervals regarding the status of the posts that had been temporarily redeployed among sections.

While welcoming the intention, the Committee requests that such reporting should include programmatic justifications for the redeployment and be submitted not only to it but also to the relevant intergovernmental bodies for their information as appropriate.

VI. HIGH-LEVEL POSTS

37. As recalled in paragraphs 9 and 10 of document A/C.5/47/88, the programme budget for the biennium 1992-1993 as adopted by the General Assembly included 48 high-level posts; the corresponding number prior to the implementation of recommendation 15 of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations 4/ was 57. The revised estimates submitted in the report of the Secretary-General (A/C.5/47/2 and Corr.1) provided for a total of 36 regular budget high-level posts, including that of Assistant Secretary-General of the Head of the International Trade Centre (ITC). In its resolution 47/212, the Assembly decided to postpone action on those proposals. The Secretary-General is now making a number of additional proposals, as outlined in paragraph 11 of his report (A/C.5/47/88), the net result of which would, as stated in paragraph 12, lead to a further reduction of three high-level posts, excluding the proposal with respect to the ITC Assistant Secretary-General post. However, he requests the retention of the resources attached to three Assistant Secretary-General-level posts. The Committee was informed that the present location of those resources would not necessarily determine where they would be utilized.

38. The Secretary-General states his intention, with regard to the Assistant Secretary-General post of Head of ITC, which is financed jointly by the Organization and the General Agreement on Tariffs and Trade (GATT), to advise the Director-General of GATT that the position of the United Nations is that the post stands abolished and that the Centre should be headed at the D-2 level. In this connection, the Advisory Committee points out that before action is taken a decision is required by both GATT and the General Assembly. The Committee would welcome the advice of the Trade and Development Board and/or its appropriate subsidiary bodies on this proposal.

39. The Advisory Committee notes from paragraph 17 that the Secretary-General will propose to abolish a number of high-level posts financed from extrabudgetary resources to the concerned governing bodies. The Committee trusts that the proposals will be made taking into account the operational needs and workload of the programmes concerned.

40. The Advisory Committee appreciates the efforts of the Secretary-General to streamline the senior management structure of the Secretariat. The Committee assumes that the purpose of this exercise is not necessarily to achieve cost savings, which would be minimal in relation to the programme budget as a whole, but rather to assure "clear lines of responsibility and accountability", as referred to in paragraph 7 of his report. However, the Advisory Committee failed to detect a clear rationale that would explain the proposals put forward in document A/C.5/47/2 and Corr.1 and those contained in paragraphs 11 and 13 of document A/C.5/47/88. Nor is there adequate detailed justification for each and every proposal such as one might expect to find in a fully justified proposed

programme budget document. In this connection, the Advisory Committee was informed that there was no set of objective classification criteria for high-level posts. The Advisory Committee recommends that such criteria be developed.

41. The Advisory Committee had particular difficulty with the proposals relating to the Department of Administration and Management. This Department is concerned with the overall administration and management of United Nations operations, including, in addition to the regular budget, peace-keeping activities and extrabudgetary expenditure. With the incorporation of conference services, this Department is the largest, in terms of staff members, in the United Nations. The Department is responsible for directly carrying out and/or monitoring the effective implementation of policies that are at the very core of the functioning of this Organization. In order to carry out their tasks effectively, the most senior officials of this Department should have a degree of authority that is equivalent to the most senior officials in the other areas of the United Nations.

42. The Advisory Committee therefore recommends that action on the Secretary-General's proposals regarding the four high-level posts in the Department of Administration and Management be deferred and that the Secretary-General be given the opportunity to review them in the light of such comments as the General Assembly may wish to make and to justify and explain more fully these changes in the context of his proposals for the programme budget for the biennium 1994-1995. In reviewing this matter the Secretary-General should also take into account the considerations referred to in paragraphs 44 to 48 below.

43. In addition to the proposals regarding the high-level posts in the Department of Administration and Management, the General Assembly will need to consider the balance of the proposals contained in document A/C.5/47/88 as well as those contained in document A/C.5/47/2 and Corr.1, pursuant to General Assembly resolution 47/212.

44. Closely related to the Secretary-General's proposals for high-level posts are his ideas with regard to a senior career post at a level above D-2, which would, according to paragraph 14 of his report (A/C.5/47/88), be equivalent in terms of salary and related entitlements to the Assistant Secretary-General level for selected high-level managerial responsibilities. The Secretary-General intends to submit a study that will identify a limited number of positions for this purpose.

45. The Advisory Committee was not given a clear statement of purpose for such an innovation. If the objective of the creation of a D-3 post is to provide greater career development for the "permanent" civil service, the Committee questions how the creation of such a limited number of positions will have a significant impact on the career prospects of staff currently at the Professional level and above. If the purpose of the creation of a D-3 level would be to clarify reporting lines in the chain of command, the Advisory Committee believes that such a clarification can be achieved through measures that would avoid tampering with the time-tested structure of the international career civil service (see para. 47 below). In addition, the Committee points out that the creation of such a level would in all probability have system-wide implications requiring lengthy and complicated inter-agency consultations; it

would therefore, in the opinion of the Advisory Committee, require study by the International Civil Service Commission.

46. The Advisory Committee cautions that the creation of a D-3 level would, over time, tend to create pressure for additional D-3 posts and eventually defeat the objective of rationalizing the number of high-echelon posts. It also notes that it appears not to be the intent to eliminate all Assistant Secretary-General posts and to replace them with positions at the career level of D-3. In the circumstances, the Advisory Committee believes that it would cause needless confusion to have equivalent levels that are in different categories. The confusion might very well extend to the exercise of authority - a D-3 could in fact become known as a "second-class Assistant Secretary-General" - and this would diminish authority in vital areas of administration and control.

47. The Advisory Committee points out that positions equivalent to the Assistant Secretary-General level are often given titles other than Assistant Secretary-General, such as the Assistant Administrators in UNDP and the Assistant Executive Director of the United Nations Population Fund (UNFPA), and, elsewhere in the United Nations system, Assistant Directors-General. The need within the top echelon to clarify reporting might be more easily accomplished through the issuance of a Secretary-General's Bulletin to outline reporting responsibilities. The Advisory Committee believes that this most senior category of officials should continue to have an appropriate mix of "career" and "non-career" appointees, and that procedures in place to facilitate this should be maintained.

48. In the circumstances, the Committee notes that the proposal to establish the D-3 posts may not be so advanced during the current biennium as to require use of the resources retained for that purpose (see para. 37 above).

Notes

1/ See for example, the first report of the Advisory Committee on the proposed programme budget for the biennium 1992-1993, Official Records of the General Assembly, Forty-sixth Session, Supplement No. 7 (A/46/7), chap. I, paras. 63-66.

2/ Department for Policy Coordination and Sustainable Development, Department of Economic and Social Information and Policy Analysis, and Department of Development Support and Management Services.

3/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 7 (A/47/7/Add.1).

4/ See Official Records of the General Assembly, Forty-first Session, Supplement No. 49 (A/41/49), para. 35.